



## WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

**DATE** May 4, 2022

**TO** Members, Select Water Committee

**FROM** Abigail Boudewyns, Research/Evaluation Administrator

**SUBJECT** SWC Interim Topic #5: Groundwater interference with surface water and prior appropriation.

The Select Water Committee's task with respect to interim topic priority #5 is to review W.S. 41-3-911 and 41-3-916 for potential statutory changes. The concern expressed at both the Committee's interim topic selection meeting in March and at the Management Council's interim topic meeting in April was a concern that a senior appropriator currently bears the burden of deepening a well if a junior appropriator puts in a deeper well that interferes with the senior appropriator's well production.

**Wyoming Statute 41-3-911(a)** sets out two standards for interference claims if the well that is interfered with was developed solely for domestic or stock uses, as defined in W.S. 41-3-907. If another well unreasonably interferes with an "adequate well developed solely for domestic or stock uses," the operator of the stock or domestic well may file a claim with the State Engineer claiming interference from another appropriator. The State Engineer, following the complaint, may order the interfering appropriator to cease or reduce withdrawals of groundwater, unless the appropriator furnishes at his own expense sufficient water at the former place of use. In the case of alleged interference between an appropriator and a well developed solely for domestic or stock uses, the State Engineer's Office will determine 1) the priority of a valid water right; 2) if the well is "adequate"; and 3) if "unreasonable interference" exists. Neither statute or rule provide specific guidance on what is considered "unreasonable" or "adequate". However, both terms are used elsewhere in statute and the State Engineer's Office has rules pertaining to minimum construction standards for wells. In the case of two wells using water for stock or domestic use, the prior appropriator shall have the better right. In such a case, the State Engineer's Office will only have to determine whether the priority of a valid water right and whether there is interference.

**Wyoming Statute 41-3-911(b)** provides that if the well was not developed solely for domestic or stock uses, any appropriator of either surface or underground water may file a written complaint alleging interference with his water right by a junior underground water right. The state engineer must investigate the complaint and issue a report to all interested parties stating his findings. The report may suggest various means of stopping, rectifying or ameliorating the any interference or damage. In such cases, the State Engineer's Office determines whether there is interference and the priority of a valid water right.

**Wyoming Statute 41-3-916** dictates who has priority in situations involving interference between different groundwater aquifers or between groundwater and surface water rights.

“Where underground waters in different aquifers are so interconnected as to constitute in fact one source of supply, or where underground waters and the waters of surface streams are so interconnected as to constitute in fact one source of supply, priorities of rights to the use of all such interconnected waters shall be correlated and such single schedule of priorities shall relate to the whole common water supply. The state engineer may by order adopt any of the corrective controls specified in W.S. 41-3-915.”

Because Wyoming Statutes 41-3-911 and 41-3-916 both deal with interference claims concerning groundwater wells, the two statutes would likely need to be read in conjunction with one another as required by facts pertaining to a specific claim of interference.

If you have any questions, or would like any additional information on this topic, please do not hesitate to reach out to LSO at 777-7881.